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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

**BINYAM MOHAMED;
ABOU ELKASSIM BRITEL;
AHMED AGIZA;
MOHAMED FARAG AHMAD
BASHMILAH;
BISHER AL-RAWI,**

Plaintiffs,

v.

JEPPESEN DATAPLAN, INC.,

Defendant.

Civil Action No. 5:07-cv-02798 (JW)

**DECLARATION OF MARGARET L.
SATTERTHWAITE IN SUPPORT OF
PLAINTIFFS' OPPOSITION TO THE
UNITED STATES' MOTION TO DISMISS
OR, IN THE ALTERNATIVE, FOR
SUMMARY JUDGMENT**

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1 I, MARGARET L. SATTERTHWAITE, under penalty of perjury, declare as follows,
2
3 pursuant to 28 U.S.C. § 1746:

- 4 1. I am a licensed attorney and co-director of the International Human Rights Clinic at New
5 York University School of Law. The International Human Rights Clinic is part of
6 Washington Square Legal Services, Inc. ("WSLS"). WSLS was retained by Plaintiff
7 Mohamed Farag Ahmad Bashmilah ("Mr. Bashmilah") in 2006 and I represent him as co-
8 counsel in this action.
- 9 2. I submit this declaration in support of Plaintiffs' Opposition to the United States' Motion
10 to Dismiss or, in the alternative, for Summary Judgment. Specifically, I submit this
11 declaration to demonstrate the significant number of documents in the public domain
12 regarding the apprehension, rendition and detention of Mr. Bashmilah as part of the
13 Central Intelligence Agency's ("CIA") rendition program. These documents comprise,
14 *inter alia*, reports published by non-governmental organizations concerning Mr.
15 Bashmilah's case; documents published by inter-governmental bodies expressing concern
16 about Mr. Bashmilah's treatment; and media reports concerning the rendition and
17 detention of Mr. Bashmilah. This declaration does not discuss all of the documentation
18 that has been made public concerning Mr. Bashmilah's experience. Instead, it gives a
19 sense of the breadth and scope of the facts that are readily available in the public domain.
20 With one exception, all of the documents cited here were published in English. I am
21 aware that media outlets which publish in other languages, including Arabic, French, and
22 Spanish, have published stories concerning Mr. Bashmilah as well.
- 23 3. Amnesty International ("AI") conducted several missions to Yemen in 2005 and 2006, in
24 part to investigate the rendition and secret detention of Mr. Bashmilah. These missions
25 resulted in a series of detailed reports that recount Mr. Bashmilah's experience within the
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1 CIA rendition program. On August 4, 2005, while Mr. Bashmilah was still in detention in
2 Yemen following his release from U.S. custody, AI issued a report documenting his
3 experience in the CIA rendition program. Attached hereto as Exhibit A is a true and
4 correct copy of Amnesty International, *USA/Jordan/Yemen: Torture and Secret*
5 *Detention: Testimony of the "Disappeared" in the "War on Terror"* (Aug. 4, 2005),
6 *available at* <http://web.amnesty.org/library/index/engamr511082005>.

- 7
8 4. Following the release of AI's August 2005 report, a variety of media outlets reported on
9 Mr. Bashmilah's experience as revealed in the report. Attached hereto as Exhibit B are
10 true and correct copies of the following newspaper or internet news articles discussing Mr.
11 Bashmilah:

- 12 i. *US Challenged Over 'Secret Jails,'* BBC NEWS, (Aug. 4, 2005), *available at*
13 <http://news.bbc.co.uk/2/hi/americas/4743485.stm>;
14
15 ii. David Mark, *US Torturing Detainees in Secret Locations: Amnesty*, ABC
16 PREMIUM NEWS, (Aug. 4, 2005), *available at*
17 <http://www.abc.net.au/news/stories/2005/08/04/1429783.htm>;
18
19 iii. Michelle Faul, *Report says U.S. Held Two Yemeni Prisoners in Secret*
20 *Underground Jail*, ASSOCIATED PRESS, (Aug. 3, 2005); *reprinted as Report says*
21 *U.S. secretly held two prisoners*, USA TODAY, (Aug. 3, 2005), *available at*
22 http://www.usatoday.com/news/world/2005-08-03-secret-detainees_x.htm; *Two*
23 *Yemeni Men Claim Secret Detention*, FOX NEWS.COM, (Aug. 4, 2005), *available at*
24 <http://www.foxnews.com/story/0,2933,164697,00.html>;
25
26 iv. Richard Norton-Taylor, *Detainees 'deprived of daylight,'* THE GUARDIAN, (Aug. 4,
27 2005), *available at*
28 <http://www.guardian.co.uk/usa/story/0,12271,1542082,00.html>; and

- 1 v. *Amnesty Decries US Secret Detentions*, ALJAZEERA.NET, (Aug. 4, 2005), available
2 at <http://english.aljazeera.net/English/archive/archive?ArchiveId=13914>.
- 3 5. On November 8, 2005, Amnesty International released a follow-up report detailing Mr.
4 Bashmilah's story and further discussing his detention in CIA "black site" facilities.
5 Attached hereto as Exhibit C is a true and correct copy of relevant excerpts from Amnesty
6 International, *USA / Yemen: Secret Detention in CIA "Black Sites"* (Nov. 8, 2005),
7 available at
8 [http://web.amnesty.org/library/pdf/AMR511772005ENGLISH/\\$File/AMR5117705.pdf](http://web.amnesty.org/library/pdf/AMR511772005ENGLISH/$File/AMR5117705.pdf).
- 9 6. A variety of media outlets reported on the findings concerning Mr. Bashmilah contained
10 in AI's November 2005 report. Attached hereto as Exhibit D are true and correct copies
11 of the following newspaper and internet news articles:
12
- 13 i. Josh White, *Prisoner Accounts Suggest Detention At Secret Facilities; Rights*
14 *Group Draws Link to the CIA*, WASH. POST, (Nov. 7, 2005);
15
- 16 ii. Tito Drago, *Human Rights-US: Exporting Torture*, IPS-INTER PRESS SERVICE,
17 (Nov. 9, 2005), available at <http://ipsnews.net/news.asp?idnews=30951>; and
18
- 19 iii. Ian Cobain, *Seized, Held, Tortured: Six Tell Same Tale*, THE GUARDIAN, (Dec. 6,
20 2005), available at
21 <http://www.guardian.co.uk/international/story/0,1658934,00.html>, reprinted as
22 *We Were Tortured*, THE MIRROR, (Dec. 7, 2005), available at
23 <http://www.mirror.co.uk/archive/2005/12/07/we-were-tortured-89520-16455120/>.
- 24 7. On April 5, 2006, Amnesty International issued a report further detailing the U.S. program
25 of extraordinary rendition, documenting flight patterns associated with the rendition
26 program, and summarizing a number of cases of rendition, including that of Mr.
27 Bashmilah. Specifically, the report included information on the Gulfstream jet registered
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1 with the Federal Aviation Administration as N379P. This is the plane that WSLs later
2 determined transferred Mr. Bashmilah from Amman, Jordan to Kabul, Afghanistan on
3 October 26, 2003, and which was operated by Jeppesen Dataplan, Inc., Defendant in this
4 action. The report also revealed the role of private companies and aircraft within the CIA
5 rendition program. Attached hereto as Exhibit E is a true and correct copy of relevant
6 excerpts from Amnesty International, *USA/Jordan/Yemen: Below the Radar: Secret*
7 *Flights to Torture and "Disappearance,"* (Apr. 5, 2006), available at
8 <http://web.amnesty.org/library/Index/ENGAMR510512006?open&of=ENG-USA>.

10 8. A variety of media outlets reported on the findings concerning Mr. Bashmilah contained
11 in this report. Attached hereto as Exhibit F are true and correct copies of the following
12 newspaper and internet news articles:

- 14 i. Scott Shane and Margot Williams, *Yemenis Freed After Transfer From Secret*
15 *Prisons, Report Says*, NEW YORK TIMES, (Apr. 5, 2006), available at
16 <http://www.nytimes.com/2006/04/05/world/middleeast/05detain.html>;
- 17 ii. Josh White, *3 U.S.-Detained Yemenis Freed, Rights Group Says*, WASH. POST,
18 (Apr. 6, 2006), available at [http://www.washingtonpost.com/wp-](http://www.washingtonpost.com/wp-dyn/content/article/2006/04/05/AR2006040502100.html)
19 [dyn/content/article/2006/04/05/AR2006040502100.html](http://www.washingtonpost.com/wp-dyn/content/article/2006/04/05/AR2006040502100.html);
- 20 iii. Richard Norton-Taylor, *Amnesty demands public inquiry on rendition flights*, THE
21 GUARDIAN, (Apr. 5, 2006), available at
22 <http://www.guardian.co.uk/humanrights/story/0,,1746826,00.html>;
- 23 iv. Andrew Buncombe, *Revealed: The plight of prisoners caught up in US rendition*,
24 THE INDEPENDENT, (Apr. 5, 2006), available at
25 <http://news.independent.co.uk/world/americas/article355817.ece>;
- 26
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- v. Daniel Dombey and Demetri Sevastopulo, *Amnesty links rendition flights with torture*, FINANCIAL TIMES (Apr. 5, 2006), available at <http://www.ft.com/cms/s/0/81444c16-c400-11da-bc52-0000779e2340.html>;
- vi. *CIA Exploited Aviation Practices to Unlawfully Transfer Detainees to Countries that Torture, According to New Amnesty Int'l. Report*, P.R. NEWSWIRE, (Apr. 4, 2006);
- vii. *U.K.: Rendition report prompts probe calls*, UNITED PRESS INTERNATIONAL, (Apr. 5, 2006);
- viii. *Amnesty Asks if CIA Held Yemenis in Djibouti, Afghanistan, and East Europe*, AGENCE FRANCE PRESSE, (Apr. 5, 2006);
- ix. Ruadhán Mac Cormaic, *'Rendition' Aircraft used Irish Airports – Amnesty*, THE IRISH TIMES, (Apr. 5, 2006), available at <http://www.ireland.com/newspaper/world/2006/0405/1142365531244.html>;
- x. Jennifer Quinn, *'Black Site' prisons may have been in Eastern Europe; Yemeni detainees detail accounts of journeys that may have been secret CIA flights*, THE HOUSTON CHRONICLE, (Apr. 5, 2006), available at http://www.chron.com/CDA/archives/archive.mpl?id=2006_4092264;
- xi. *Yemeni rendition prisoners shed light on secret CIA incarceration*, BELFAST TELEGRAPH, (Apr. 5, 2006);
- xii. *Amnesty report probes CIA jails*, ALJAZEERA.NET, (April 6, 2005), available at <http://english.aljazeera.net/English/archive/archive?ArchiveId=21766>; and
- xiii. Nat Hentoff, *CIA Secret Prisons Exposed: The disappeared: Are they dead? Are they alive? Ask Congress. Ask the President.*, THE VILLAGE VOICE,

(May 7, 2006), *available at*

<http://www.villagevoice.com/news/0619,hentoff,73121,6.html>.

9. On June 12, 2006, the Parliamentary Assembly Committee on Legal Affairs and Human Rights of the Council of Europe published a report on the U.S program of extraordinary rendition. This report followed an investigation conducted during a period of several months by Committee Rapporteur Dick Marty that examined the complicity of European nations in the CIA rendition program. This report documented Mr. Bashmilah's experience and reported Amnesty International's belief that he was held "somewhere in eastern Europe" before being returned to Yemen on May 5, 2005 following a seven hour flight. Council of Europe Parliamentary Assembly Committee on Legal Affairs and Human Rights (Rapporteur Dick Marty), *Alleged Secret Detentions and Unlawful Interstate Transfers Involving Council of Europe Member States*, (June 12, 2006), at 41, *available at* <http://assembly.coe.int/Documents/WorkingDocs/doc06/edoc10957.pdf>; relevant pages attached hereto as Exhibit G.

10. The findings of the Council of Europe's 2006 report were widely reported in the media. Several media outlets referenced Mr. Bashmilah in this connection. Attached hereto as Exhibit H are true and correct copies of the following newspaper and internet news articles that discuss Mr. Bashmilah:

- i. Paul Reynolds, *Rendition and the rights of the individual*, BBC NEWS, (June 7, 2006), *available at* <http://news.bbc.co.uk/2/hi/europe/5055872.stm>;
- ii. *'Terror Flight' inquiry uncovers collusion*, THE TIMES (LONDON), (June 7, 2006), *available at* http://business.timesonline.co.uk/tol/business/law/public_law/article672484.ece; and

1 iii. *European governments collaborated with US on renditions: Report*, AGENCE
2 FRANCE PRESSE, (June 6, 2006).

3 11. On October 21, 2007, the leading Danish newspaper, *Politiken*, reported that the
4 Gulfstream jet registered as N379P crossed Danish airspace before collecting Mr.
5 Bashmilah from Amman, Jordan and transferring him to Kabul, Afghanistan. The report
6 details Mr. Bashmilah's experience in the CIA's extraordinary rendition program.
7 Attached hereto as Exhibit I is a true and correct copy of Claus Blok Thomsen,
8 *Torturflyet*, POLITIKEN, (Oct. 21, 2007).

9 i. Following the revelations published in *Politiken* concerning the passage through
10 Danish airspace of the plane that later rendered Mr. Bashmilah to Afghanistan,
11 Amnesty International published a press release calling on the Danish authorities
12 to initiate an investigation. Attached hereto as Exhibit J is a true and correct copy
13 of Amnesty International, *Denmark: Authorities Must Come Clean about*
14 *Renditions*, (Oct. 23, 2007), available at
15 <http://web.amnesty.org/library/index/engEUR180032007>.

16 ii. The *Malaysia Sun* reported on the allegations concerning Mr. Bashmilah's
17 rendition in an article published on October 31, 2007. Attached hereto as Exhibit
18 K is a true and correct copy of *Denmark latest European government to duck*
19 *rendition probe*, MALAYSIA SUN, (Oct. 31, 2007), available at
20 <http://story.malaysiasun.com/index.php/ct/9/cid/b8de8e630faf3631/id/295991/cs/1>
21 /.

22 12. Information about Mr. Bashmilah's experience in the U.S. rendition program has been
23 reported by the media on several other occasions. Attached hereto as Exhibit L are true
24 and correct copies of the following newspaper and internet news articles:
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- i. Stephen Grey, *Missing presumed tortured*, NEW STATESMAN, (Nov. 20, 2006), available at <http://www.newstatesman.com/200611200014> (commenting on Mr. Bashmilah's rendition and detention by the U.S. government in Afghanistan and later in a "black site" prison); and
- ii. Adnan Siddiqui and Victoria Brittain, *Pinochet is gone, but his methods are still with us*, THE GUARDIAN, (Dec. 13, 2006), available at <http://www.guardian.co.uk/chile/story/0,,1970915,00.html> (reporting on Mr. Bashmilah's experience in a U.S.-run "black site" prison).

13. The United Nations ("U.N.") has on a number of occasions publicly expressed concern about the treatment that Mr. Bashmilah suffered as part of the U.S. rendition program. Several U.N. entities have issued public reports or opinions referencing concern about Mr. Bashmilah's treatment and have engaged in correspondence with the governments involved in Mr. Bashmilah's apprehension, rendition, and detention. These reports and correspondence make publicly available key facts concerning Mr. Bashmilah's experience. Attached hereto as Exhibits M through S are true and correct copies of relevant excerpts from the U.N. documents summarized below.

14. The U.N. Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, Professor Martin Scheinin, together with the U.N. Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Professor Manfred Nowak, communicated with several countries concerning Mr. Bashmilah, relaying the facts regarding abuses that he suffered during his rendition and secret detention and requesting an official response. On December 23, 2005, Special Rapporteur Scheinin submitted a report to the United Nations Commission on Human Rights detailing these communications. Attached hereto as Exhibit M is a true and

1 correct copy of relevant excerpts from the Report of the Special Rapporteur on the
2 Promotion and Protection of Human Rights and Fundamental Freedoms while Countering
3 Terrorism, Addendum, Communications with Governments (2005). The report documents
4 the following joint communications from Special Rapporteur Scheinin and Special
5 Rapporteur Nowak to the governments of Indonesia, Jordan, the United States, and Yemen:
6

- 7 i. **Indonesia** - On November 18, 2005, in a letter to the government of Indonesia, the
8 two Special Rapporteurs posed "specific questions concerning the legal basis for
9 the detention procedures to ensure that [Mohamed Bashmilah and another
10 detainee] had recourse to judicial review of the lawfulness of their detention and
11 the applicable legal basis for measures referring to 'terrorism'." The Special
12 Rapporteurs requested a response by January 14, 2006. *Id.* at paras. 3-4.
13
14 ii. **Jordan** - On November 17, 2005, in a letter to the government of Jordan, the two
15 Special Rapporteurs drew the government's attention to information they received
16 alleging that Mohamed Bashmilah had been tortured by officials in Jordan. The
17 Special Rapporteurs posed "specific questions concerning the legislation in Jordan,
18 e.g. on the legal basis for the detention procedures to ensure that detainees have
19 recourse to judicial review of the lawfulness of their detention, and the applicable
20 legal basis for measures referring to 'terrorism,'" and requested a response by
21 January 14, 2006. *Id.* at paras. 5-8.
22
23 iii. **United States** - On November 17, 2005, the two Special Rapporteurs asked the
24 U.S. government to respond to specific allegations concerning Mr. Bashmilah's
25 experience in U.S. custody, calling to the attention of the U.S. government
26 allegations that he had been held incommunicado for an extended period in several
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1 different U.S.-run detention centers. The Special Rapporteurs requested a
2 response by January 14, 2006. *Id.* at paras. 22-23.

3 iv. **Yemen** - On November 17, 2005, in a letter to the government of Yemen, the two
4 Special Rapporteurs called to the government's attention information they had
5 received concerning Mr. Bashmilah's transfer from U.S. custody to detention in
6 Yemen. The Special Rapporteurs posed "specific questions concerning the
7 legislation in Yemen referring to 'terrorism', and about the legal basis for the
8 detention procedures to ensure that detainees had recourse to judicial review of the
9 lawfulness of their detention." The Special Rapporteurs requested a response by
10 January 14, 2006. *Id.* at paras. 28-30.
11

12 15. The Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or
13 Punishment published a report dated March 21, 2006 that referenced a letter he received
14 from the government of Yemen in response to the communication outlined above in para.
15 14(iv). This letter, dated December 20, 2005, explained that Mr. Bashmilah had been
16 transferred to the custody of the government of Yemen by the U.S. government. Special
17 Rapporteur Nowak's summary of the letter explains that the government of Yemen stated
18 that Mr. Bashmilah was "not arrested but rather [was] handed over to them by the United
19 States authorities" after having been accused of being a member of Al-Qaeda." The report
20 further states that the letter explained that "The Yemeni authorities detained [him] under
21 the Code of Criminal Procedures with a view to questioning [him] and verifying the
22 allegations made by the US authorities. The Yemeni authorities received the files on [Mr.
23 Bashmilah and another detainee] from the US authorities on 10 November 2005, and the
24 legal procedures are being completed pending their arraignment before the courts."
25 Attached hereto as Exhibit N is a true and correct copy of the Report of the Special
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1 Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,
2 Manfred Nowak, Addendum, Summary of information, including individual cases,
3 transmitted to Governments and replies received (letter summarized at 340-341). *See also*
4 attached hereto as Exhibit O a true and correct copy of relevant excerpts from the Report
5 of the Special Rapporteur on the Promotion and Protection of Human Rights and
6 Fundamental Freedoms while Countering Terrorism, Addendum, Communications with
7 Governments (2007) (summarizing the same letter at para. 75).

9 16. On January 5, 2007, the Special Rapporteur on Torture and Other Cruel, Inhuman or
10 Degrading Treatment or Punishment published a report concerning a mission to Jordan
11 that he undertook from June 25 to 29, 2006. Attached hereto as Exhibit P is a true and
12 correct copy of the Report of the Special Rapporteur on Torture and Other Cruel, Inhuman
13 or Degrading Treatment or Punishment, Manfred Nowak, Addendum, Mission to Jordan.
14 In this report, the Special Rapporteur noted that Jordan "has repeatedly been mentioned in
15 relation to the practice by the United States of America of 'extraordinary renditions.'" *Id.*
16 at para. 43. The Special Rapporteur stated that he had received "credible evidence"
17 demonstrating that Mr. Bashmilah was held by the U.S. government in cooperation with
18 the government of Jordan. *Id.* The Rapporteur included in his report a passage drawn
19 from a letter he received from the government of Jordan dated January 18, 2006, in which
20 the government confirmed that Mr. Bashmilah "was brought in to the [General
21 Intelligence] Department for questioning on 21 October 2003." *Id.* at n. 10. However, the
22 government of Jordan refuted the allegations regarding Mr. Bashmilah's detention; the
23 Special Rapporteur summarized the government's response on this point as follows:
24 Jordan claimed that "the allegations are false as there is no record showing that Mr.
25 Bashmilah and one other detainee] had been arrested for [. . .] violations of either the
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1 penal, disciplinary or administrative codes.” *Id.* Further, the Special Rapporteur
2 explained that the government of Jordan stated that it did not possess any files indicating
3 that Mr. Bashmilah posed a security threat.

4
5 17. On March 15, 2007, the Special Rapporteur on the Promotion and Protection of Human
6 Rights and Fundamental Freedoms while Countering Terrorism published a report that
7 includes a summary of the same letter, written by the government of Jordan on January
8 18, 2006, described in para. 16 above. Attached hereto as Exhibit Q is a true and correct
9 copy of relevant excerpts from the Report of the Special Rapporteur on the Promotion and
10 Protection of Human Rights and Fundamental Freedoms while Countering Terrorism,
11 Addendum, Communications with Governments (2007) (letter summarized at para. 34).

12
13 18. On March 22, 2007, in a *Note Verbale* to the United Nations Office of the High
14 Commissioner for Human Rights, the Permanent Mission of Jordan to the United Nations
15 Office at Geneva provided another response to allegations concerning the ill-treatment of
16 Mr. Bashmilah. In this communication, the government of Jordan stated that Mr.
17 Bashmilah “was brought back to the [General Intelligence] Department for questioning on
18 21 October 2003... He was then told to leave the country, which he did on 26 October
19 2003.” Attached hereto as Exhibit R is a true and correct copy of the *Note Verbale* from
20 the Permanent Mission of Jordan to the United Nations Office of Geneva addressed to the
21 Office of the High Commissioner for Human Rights.


22
23 1. On November 30, 2005, the United Nations Working Group on Arbitrary Detention
24 (“Working Group”) issued its Opinion No. 47/2005 concerning the detention of Mr.
25 Bashmilah. Attached hereto as Exhibit S is a true and correct copy of the United
26 Nations Working Group on Arbitrary Detention Opinion 47/2005.

1 19. This Opinion was issued while Mr. Bashmilah was still in custody in Yemen. The
 2 Working Group explained that the government of Yemen confirmed that Mr. Bashmilah
 3 was “handed over to Yemen by the United States...[t]he Government of Yemen add[ed]
 4 that the ‘competent authorities are still dealing with the case pending receipt of [the] files
 5 [concerning Mr. Bashmilah] from the United States of America authorities in order to
 6 transfer them to the Prosecutor.’” *Id.* at para. 15. In its Opinion, the Working Group
 7 made three important points concerning Mr. Bashmilah:
 8

- 9 i. The Working Group noted that Mr. Bashmilah’s transfers before he was returned
 10 to Yemen were accomplished “outside the confines of any legal procedure,”
 11 noting that he therefore was not given “access to counsel or to any judicial body
 12 to contest the transfers.” *Id.* at para. 19.
 13
 14 ii. The Working Group found that the Yemeni government detained Mr. Bashmilah
 15 without a legal basis and that the detention was therefore arbitrary. The Working
 16 Group opined that the government of Yemen was in violation of article 9 of the
 17 Universal Declaration of Human Rights and article 9 of the International
 18 Covenant on Civil and Political Rights, which both guarantee that no one shall
 19 be subject to arbitrary detention. *Id.* at para. 21.
 20
 21 iii. The Working Group requested that the government of Yemen either release Mr.
 22 Bashmilah or bring him before a competent judicial authority. *Id.* at para. 22.

23 *****

24 I hereby declare under penalty of perjury that the foregoing is true and correct. Executed this
 25 11th day of Dec. 2007.

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 27 
 28 Margaret L. Satterthwaite